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BOOKS AND PERIODICALS.

TESTS OF INSANITY IN CRIMINAL CASES. — The persistence of the knowledge of right and wrong test of insanity in criminal cases is one of the most striking instances of the conservatism of the law. This rule of responsibility was based on early medical error and cannot be reconciled with the doctrine of criminal intent in the light of modern scientific knowledge, yet it retains its place in England and in a majority of the jurisdictions in this country. The latest assault on this rule is in the form of a plea for the substitution of the irresistible impulse test. *Insanity in Criminal Cases*, by W. H. Parry, 63 Albany L. J. 429, 459 (Nov., Dec., 1901). This broader doctrine recognizes power both to distinguish and to choose between right and wrong as necessary for responsibility. It has received strong support in this country. *Montgomery* v. *Commonwealth*, 88 Ky. 509; see 8 HARV. L. REV. 360. Mr. Parry gives at length the testimony of many alienists in its favor.

It may be conceded that the rule advocated would allow the defence of insanity in a large majority of the cases where justice requires it. There is however a view which more completely reconciles law and medical science, the argument for which Mr. Parry does not seem to answer adequately. According to this doctrine there should be no absolute test and the inquiry of the jury should not be limited to any particular phase of the disease. The fundamental question of responsibility is whether the act is the product of insanity without the coöperation of a guilty motive. The insanity may cause the act by blinding one to the distinction between right and wrong, or by overpowering the will and compelling one to do what he recognizes to be wrong. It may work in other ways as by perverting a man's nature so that, purely as a matter of disease, he deliberately and voluntarily does what he knows is wrong. There are said to be patients so afflicted in every hospital for the insane, and under the test proposed by Mr. Parry these men would be punished for their insane acts. Since the forms and manifestations of insanity are so varied, there can be no absolute test applicable to all cases. The courts may and should point out ways in which the insanity may have acted, leaving the man free from responsibility, but they ought not to limit the range of the inquiry to one or several tests. This view is not without support in the courts. *State* v. *Pike*, 49 N. H. 399. Mr. Parry, however, argues that definite rules are necessary for the guidance of jurors, who are almost inevitably ignorant of diseases of the mind. But after the jury have been given the general legal rule, the needed enlightenment on the question of scientific fact in the application of that rule to the particular case comes most properly and surely from the testimony of medical experts. The gain in having a sound and just rule to save all truly insane men from punishment outweighs any increased danger of the abuse of the defence.

CONTRACTS IN RESTRAINT OF TRADE. — A brief but suggestive article as to the extent to which agreements restricting trade should be upheld appears in a recent periodical. "*Is a Contract in Restraint of Trade Sustainable as an Independent Contract?*" by Frederick H. Cooke, 35 Am. L. Rev. 836 (Nov.–Dec., 1901). The author contends that only such restraints should be sanctioned as are incidental to a larger contract, as of sale or employment.

He argues that the reason for the general rule invalidating agreements in restraint of trade is "the evil produced by the withdrawal of a capable member of society from active production;" that this evil may at times be tolerated when, by the transfer of business, another member of society is given the opportunity, new or enlarged, of engaging in the same line of activity, but not otherwise; that the independent contract involves no such transfer, and consequently is not to be sustained.